

POSITION PAPER

Effectively banning products produced, extracted, or harvested with forced labour

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Introduction

ESIA represents the European semiconductor sector which is operating and competing in Europe and globally. The European semiconductor industry has an excellent environmental and human rights record and has been active in addressing topics related to supply chain due diligence, such as the responsible sourcing of minerals and sustainable business conduct, for years. ESIA welcomes the European Commission's proposal for a Regulation on prohibiting products made with forced labour on the Union market.

ESIA appreciates that the Commission is proposing a regulation, instead of a directive, as this instrument will prevent further market fragmentation and that the proposal is based on international frameworks, such as the International Labour Organization,¹ the United Nations Guiding Principles on Business and Human Rights,² and the OECD Guidance on Due Diligence for EU Businesses to Address the Risk of Forced Labour in their Operations and Supply Chains.³

However, ESIA believes that there are certain areas of the Proposal which can be improved.

I. Coherence with other legislation

For the success of the proposal and for the EU legislation on due diligence as a whole, it is essential to ensure coherence between all the different pieces of legislation. Currently, there is the risk that the proposal for the Corporate Sustainable Due

¹ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf

² https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf.

³ https://trade.ec.europa.eu/doclib/docs/2021/july/tradoc_159709.pdf.

Diligence Directive (CS3D) and the proposal for the Forced Labour Regulation will contain different approaches. Both instruments should be aligned as much as possible with each other and existing legislation, such as the Responsible Minerals Regulation and the Batteries Regulation in order to ensure a coherent policy framework.

II. Concrete aspects of the Forced Labour Regulation

Workable time limits

Before initiating an investigation, the competent authority must request from economic operators under assessment information on actions taken to identify, prevent, mitigate or bring to an end risks of forced labour in their operations and value chains with respect to products under assessment.

The proposal envisages that economic operators shall reply within 15 working days to the request for information. ESIA believes that 15 working days is not an adequate timeframe for providing the requested information. Instead, economic operators should be given 30 working days to provide the requested information to ensure that economic operators have sufficient time to collect all relevant information. 30 working days is a common period of time for such procedures. Similarly, the competent authority is given 30 working days from the receipt of the information to close the preliminary phase of the investigation.

Product disposal

Where a competent authority establishes that an economic operator has placed on the Union market a product that has been made with forced labour, it must order the economic operator to dispose of the respective products.

ESIA strongly advocates that any disposal of products is done in accordance with circular economy principles and the Critical Raw Materials Act. Consequently, we recommend that instead of disposal, preference should be given to recycling. More specifically, affected companies should be allowed to recycle the products in question in line with the applicable national and EU legislation.

Moreover, ESIA believes that disposal should be limited to those components of the product in question that were found to be made with forced labour, instead of the entire product. This approach would allow companies to focus on those entities in their supply chain that are actually involved in forced labour, while also minimising costs, unnecessary waste and environmental impacts.

Disengagement

The objective of the proposal is to effectively prohibit the placing on the market and making available on the EU market and the export from the EU of products made with forced labour. In light of this objective, ESIA believes that it is essential that the proposal does not incentivise economic operators to disengage with their supply chain too early. Instead, economic operators should try to work on solutions together with the different actors in their supply chain.

Database

ESIA welcomes that the proposal aims to establish an indicative, non-exhaustive, verifiable and regularly updates database of forced labour risks in specific geographic areas or with respect to certain products. However, in order to achieve the desired affect – help companies to avoid problematic suppliers – such a database would need to be updated in real time. Moreover, ESIA suggests relying on existing similar databases, where possible.

Guidelines

Furthermore, ESIA notes positively that the proposal foresees that the Commission is to issue guidelines to facilitate the implementation of the proposed regulation. ESIA believes it is essential that there is sector and commodity specific guidance as well as for enforcement authorities. in order to be successful.

Recognition of industry schemes

Finally, the proposal should build on industry schemes. Similarly to the Responsible Minerals Regulation, the Forced Labour Regulation should expressly recognise the value of existing and future industry due diligence schemes to help companies comply with the requirements.

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ABOUT ESIA

The European Semiconductor Industry Association (ESIA) is the voice of the semiconductor industry in Europe. Its mission is to represent and promote the common interests of the Europe-based semiconductor industry towards the European institutions and stakeholders in order to ensure a sustainable business environment and foster its global competitiveness. As a provider of key enabling technologies, the industry creates innovative solutions for industrial development, contributing to economic growth and responding to major societal challenges. Being ranked as the most R&D-intensive sector by the European Commission, the European semiconductor ecosystem supports approx. 200.000 jobs directly and up to 1.000.000 induced jobs in systems, applications and services in Europe. Overall, micro- and nano-electronics enable the generation of at least 10% of GDP in Europe and the world.